

Remarks

Applicants submit this paper and request entry of the amendments herein.

Claims 50-70 are pending in the current application. Claims 52 and 53 are withdrawn as belonging to a non-elected invention.

Election/Restriction

During a telephone conversation with the Examiner on September 28, 2007, Applicants elected the invention of Group I (Claims 50-51 and 54-70) for continued examination. With this reply, Applicants confirm that election.

Specification

With this reply, Applicants have amended the Title to delete the word “novel” from the title of the invention. Applicants appreciate the Examiner’s suggestion for making the title more reflective of the invention.

Rejection Under 35 USC 102

Claims 63-70 are rejected under 35 USC 102, as being anticipated by WO03/091226. Applicants have added the term “solid” to Claims 63 and 67, in order to indicate that the compositions comprising the polymorphs of the present invention are claimed in their solid crystalline state. Applicants respectfully assert that the amendment to the Claims renders this rejection moot. Applicants request reconsideration and allowance of the Claims.

Rejection under 35 USC 103

The Examiner has stated that Claims 50 and 52 are rejected under 35 USC 103(a). Applicants believe the Examiner intends the rejection to apply to Claims 50 and 51. The Examiner’s rejection is based on a reference that is prior art only under 35 USC 102(e). The reference relied upon by the Examiner is WO03/091226.

Applicants assert that the current application and Application WO03/091226 were, at the time the present invention was made, commonly owned by Eli Lilly and Company.

Applicants believe that the above information disqualifies Application number WO03/091226 as prior art under 35 USC 103(c). MPEP 706.02(1)(2).

Applicants further note that in the Specification, at least on pages 4-12, the crystalline form of the compound {2-[1-(3,5-bis(trifluoromethyl)benzyl)-5-pyridin-4-yl-1H-[1,2,3]triazol-

4-yl]-pyridin-3-yl}-(2-chlorophenyl)-methanone resulting from the process used in WO03/091226 was different from the forms IV and V claimed herein, as evidenced by X-Ray Powder Diffraction data and ¹³C Solid State Nuclear Magnetic Resonance data.

As the prior art reference cited by the Examiner has been disqualified under 35 USC 103(c), Applicants respectfully assert that the rejection under 35 USC 103(a) is moot.

Applicants respectfully assert that no new matter has been introduced as a result of amendment of the Claims and request prompt consideration and allowance of the claimed subject matter. If a telephone interview would be of assistance in advancing prosecution of the subject application, Applicants' undersigned attorney invites the Examiner to telephone her at the number provided.

Respectfully submitted,

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